

**BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD**

In the Matter of the Appeal of:

PCC Rollmet, Inc.

Employer

Inspection No. **1079636**

Formerly Docket No.
15-R3D1-3653

**DECISION AFTER
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code and having taken the petition for reconsideration filed by PCC Rollmet, Inc. (Employer) under submission, renders the following decision after reconsideration.

JURISDICTION

On July 13, 2015, following a fatal accident, the Division of Occupational Safety and Health (the Division) conducted an inspection of Employer's worksite in Irvine, California. On September 16, 2015, the Division issued one serious and accident-related citation to Employer, alleging a violation of section 4184, subdivision (b) [failure to ensure machine is guarded at point of operation].

Employer timely appealed the citations.

A hearing was held before an Administrative Law Judge (ALJ) of the Board on May 19, 2016. A Decision in the matter issued on August 31, 2016, upholding the single citation and associated \$22,500 penalty.

Employer filed a timely petition for reconsideration on May 17, 2017, which was granted by the Board on November 4, 2016.

ISSUES

Was the point of operation on Employer's Mori Seiki lathe guarded as required by section 4184, subdivision (b)?

FINDINGS OF FACT

1. On July 13, 2015, Cal/OSHA Associate Safety Engineer (ASE) Randy Johns (Johns) conducted an accident inspection at a place of employment maintained by PCC Rollmet Inc. (Employer) in Irvine, California.

2. On July 10, 2015, a fatal accident occurred at Employer's place of business. A 15 pound cylindrical metal nut forcefully ejected from Employer's Mori Seiki metalworking lathe. (Ex. 3D [metal nut].) The nut struck an employee in the head.
3. At the time of the accident, an employee was running the Mori Seiki machine at its maximum speed of 1800 revolutions per minute (RPM).
4. The machine jammed, causing the metal nut to eject and break loose from the chuck.
5. On and before July 10, 2015, Employer's Mori Seiki Model MS 850 lathe was used by employees without a hood or cover.
6. The Mori Seiki lathe encloses the material being worked inside a "chuck" with three jaws to hold it. The blades that machine the piece are located inside the chuck. Those blades remain stationary while the part being worked is rotated.
7. The point of operation on the Mori Seiki is that point where the blades meet the piece being worked.
8. On the Mori Seiki MS 850, the point of operation is guarded by location. Specifically, the point of operation is guarded by the chuck.

DISCUSSION

1. **Was the point of operation on Employer's Mori Seiki lathe guarded as required by section 4184, subdivision (b)?**

The Division issued one citation alleging the following:

Prior to and on 7/10/2015, employer failed to ensure that a Mori Seiki MS-850 lathe in use by an employee had a hood or cover completely enclosing the cutter blades while the stock was being worked resulting in a fatal injury to employee when the stock being worked came loose [and] struck the employee in the head.

The regulation cited by the Division's citation is section 4184, subdivision (b):

Section 4184. Guarding Required.

(a) Machines as specifically covered hereafter in Group 8, having a grinding, shearing, punching, pressing, squeezing, drawing, cutting, rolling, mixing or similar action, in which an employee comes within the danger zone shall be guarded at the point of operation in one or a combination of the ways specified in the following orders, or by other means or methods which will provide equivalent protection for the employee.

(b) All machines or parts of machines, used in any industry or type of work not specifically covered in Group 8, which present similar hazards as the machines covered under these point of operation orders, shall be guarded at their point of operation as required by the regulations contained in Group 8.

The citation also references Article 59 Woodworking Machines and Equipment, section 4319 subdivision (a), entitled Automatic Lathes (Shoe Last, Spoke and All Other Automatic Lathes of

the Rotating Knife Type). That regulation states: “A hood or cover shall completely enclose the cutter blades while the stock is being worked. Hood or cover shall be of not less than 1/8-inch sheet steel.” The Division contends that the metalworking machine involved in this accident presents similar hazards as the woodworking machines referred to in section 4319, and therefore the machine must be guarded pursuant to section 4184.

Several terms found in section 4188, Points of Operation and Other Hazardous Parts of Machinery, Definitions, are useful for interpreting the regulation. Of particular note are the following definitions of “Danger Zone” and “Point of Operation” found in that section:

Danger Zone. Any place in or about a machine or piece of equipment where an employee may be struck by or caught between moving parts, caught between moving and stationary objects or parts of the machine, caught between the material and a moving part of the machine, burned by hot surfaces or exposed to electric shock.

Point of Operation. That part of a machine which performs an operation on the stock or material and/or that point or location where stock or material is fed to the machine. A machine may have more than one point of operation.

The first question is whether the machine creates a “grinding, shearing, punching, pressing, squeezing, drawing, cutting, rolling, mixing or similar action, in which an employee comes within the danger zone [.]” (Section 4184, subdivision (a).) The ALJ found, and the Board agrees, that the action of the lathe broadly falls into this category. The ALJ also correctly found that employees can come into the “danger zone” of the machine, as employee may be “struck by or caught between moving parts, caught between moving and stationary objects or parts of the machine, caught between the material and a moving part of the machine, burned by hot surfaces or exposed to electric shock.” (Section 4188.) It is undisputed that an employee was killed after being struck by an object, referred to as the “nut”, being worked by the machine.

Section 4184, subdivision (b) requires guarding of a machine at the “point of operation”, or the area where stock or material is worked by the machine, and/or is fed into the machine. (Section 4188). The plain language of the definition found in section 4188 limits the point of operation to that specific place where the cutting knife is touching the piece being lathed. According to unrebutted testimony from Employer’s witness, Joseph Wood (Wood), the point of operation on the Mori Seiki is guarded by location inside the chuck, and itself presents no hazard, as it cannot be accessed by the machine operator. The parties do not dispute that the specific location is guarded by location on this machine, and the operator cannot make contact with the knife while the machine is operating. The Board, following the rules of statutory construction, finds that the plain language of the safety order does not support the expansive interpretation of the term “point of operation” suggested by the ALJ’s Decision. (*Treasure Island Media, Inc.*, Cal/OSHA App. 10-1093 Decision After Reconsideration (Aug. 13, 2015), citing *Structural Shotcrete System*, Cal/OSHA App. 03-986, Decision After Reconsideration (Jun. 10, 2010).)¹ We

¹ While not dispositive, we also note that a reading of analogous Federal OSHA regulations supports the Board’s interpretation of the regulation. That federal standard analogous to section 4184 does not limit the guarding

conclude that the Division has failed to demonstrate by a preponderance of the evidence that the point of operation of the Mori Seiki lathe was not guarded.

While the safety order cited by the Division was not violated, the Board notes, without deciding, that another safety order that requires guarding to protect from flying particles or substances may be more relevant to these circumstances. Section 3303 states:

Wherever there is danger of injury from flying particles or substances, adequate shields, screens, chip guards, or enclosures shall be provided and they shall be designed and constructed for the purpose of deflecting or confining said flying particles or substances in a manner that will prevent injury to employees. When it is not possible to provide such guards, employees subject to such hazards shall be protected by the use of personal protective equipment.

Notably, the Board has upheld a violation of section 3303 in a similar case in which the employer was engaged in the use of milling machines and engine lathes for parts for the aerospace industry, just as in this case. Flying chips—which flew up to 20 feet—were created by the unguarded machines. The Decision After Reconsideration upheld a general violation based on employee exposure to the hazard created by those flying chips. (*Hughes Aircraft Company, Space & Communications Group*, Cal/OSHA App. 78-258 Decision After Reconsideration (Jan. 26, 1984).) However, the Board declines to sua sponte engage in a post-submission amendment of the Division’s citation in this instance, and concludes that the Division has failed to demonstrate a violation of section 4184, subdivision (b). The citation and associated penalty is vacated.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Art R. Carter, Chairman
Ed Lowry, Board Member
Judith S. Freyman, Board Member

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requirement to only the area of the point of operation, but is much more expansive. Rather, 29 CFR 1910.22, subdivision (a)(1) states:

Types of guarding. One or more methods of machine guarding shall be provided to protect the operator and other employees in the machine area from hazards such as those created by point of operation, ingoing nip points, rotating parts, flying chips and sparks. Examples of guarding methods are-barrier guards, two-hand tripping devices, electronic safety devices, etc.